

ENTERED

March 23, 2017

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

DAVID LYNN CLACK JR.,

§

Petitioner,

§

VS.

§

CIVIL NO. 2:16-CV-78

LORIE DAVIS, *et al*,

§

Respondents.

§

ORDER

Petitioner David Lynn Clack, Jr. (“Clack”), an inmate in the Texas Department of Criminal Justice (“TDCJ”) – Correctional Institutions Division, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 to challenge a disciplinary proceeding at the Garza East Unit in Beeville, Texas, where he is currently incarcerated. Dkt. No. 1. Clack does not challenge his underlying conviction.

On June 8, 2015, in case number 20150277087, Clack was found guilty of masturbating in public, within the confines of the Garza East Unit. Dkt. No. 11 at 3. The punishment included: (1) the loss of 45 days loss of commissary, recreation and telephone privileges; (2) the loss of 30 days good-time credits, and (3) a reduction in his line class from L1 to L2. *Id.* Clack appealed this finding of guilty through the TDCJ grievance procedure which was denied at Step 2. *Id.* at 3-4.

The Court has before it: Clack’s petition, Dkt. No. 1; Respondents’ motion for summary judgment, Dkt. No. 11, to which Clack did not directly respond; the Memorandum and Recommendations (“M&R”) of the Magistrate Judge to whom this case was referred pursuant to 28 U.S.C. § 636(b), Dkt. No. 15; and Clack’s objections to the M&R, Dkt. No. 20. The Court reviews objected-to portions of a Magistrate Judge’s proposed findings and recommendations de novo. 28 U.S.C. § 636(b)(1) (“A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made.”).

The Magistrate Judge recommends that Respondents' motion for summary judgment be granted, and Clack's action for habeas corpus relief be denied on the merits. Dkt. No. 15 at 1-2. The Magistrate Judge's M&R details the applicable law and reasons for these recommendations in detail. *See id.* The Magistrate Judge further recommends that a Certificate of Appealability be denied. *Id.* at 8-9.

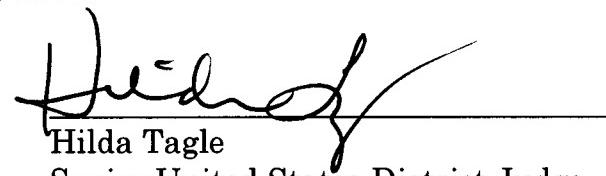
Clack objects to the M&R, and opposes Respondents' motion for summary judgment in his objections, by stating that: (1) the state's evidence against him was insufficient to justify the discipline he received, (2) that he was not afforded a fair disciplinary hearing because he was not allowed to bring witnesses to testify at this hearing, (3) that prison officials' reports regarding the conduct he was disciplined for were "falsified," (4) that the testimony offered by a prison official against him at his disciplinary hearing does not constitute reliable evidence, and (5) that he was denied access to effective assistance of counsel at his disciplinary hearing. *See* Dkt. No. 20. Each one of Clack's objections is effectively a recitation of the claims posed in his initial petition in this action, each of which was addressed in detail by the Magistrate Judge. The Court finds that the M&R adequately answers each of these five claims.

The Court acknowledges Clack's insistence that he is innocent of the conduct he has been punished for by the TDCJ, and his general complaint that the design of the Garza Unit East deprives prisoners of privacy. *See* Dkt. No. 20. The Court also acknowledges Clack's references in his objections to the Eighth Amendment and his allegation that TDCJ officials and employees have acted with "deliberate indifference" with respect to their design and operation of the bathroom facilities at the Garza East Unit. *See id.* To the extent Clack is attempting to plead a *Bivens* claim with these latter statements, however, the Court is precluded from addressing them here. Clack is incarcerated at a prison run by the Texas Department of Criminal Justice, and has sued the Director of this state system in his instant petition. Yet *Bivens* actions provide certain remedy for federal prisoners. *See Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1994).

After independently reviewing the record and considering the applicable law, the Court adopts the entirety of the Magistrate Judge's proposed findings and recommendations; **GRANTS** Respondent's motion for summary judgment, Dkt. No. 11; **DENIES** the petition for a writ of habeas corpus, Dkt. No. 1; and **DENIES** Petitioner a Certificate of Appealability. The Court further **DIRECTS** the Clerk to close this case after entering the accompanying judgment.

It is so ORDERED.

SIGNED this 23 day of March, 2017.



Hilda Tagle
Senior United States District Judge